

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PETER LORA, et al

1:07 CV 2787

V.

JUDGE DAN AARON POLSTER

DEAN BOLAND

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO STRIKE (R.

Dean Boland respectfully moves this court to overrule Plaintiffs' Objection and deny their Motion to Strike for the reasons contained in the attached memorandum.

/s/ Dean Boland
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MEMORANDUM

Plaintiff's assertion is correct that Defendant has challenged the constitutionality of at least one federal statute or portions thereof. Plaintiff was aware of those challenges from the earliest pleadings in this case. Neither party nor the court has been alerted to the apparent failure to comply with F.R.C.P. 5.1 until Plaintiffs' filing on May 3, 2011. The suggested penalty of striking all pleadings filed by Defendant containing constitutional challenges is inappropriate as Plaintiffs' perhaps unintentionally point out in their motion.

FRCP 5.1(d) NO FORFEITURE. A party's failure...or the court's failure to certify [a constitutional claim] does not forfeit [that] constitutional claim or defense that is otherwise timely asserted.

Plaintiffs' do not argue that Defendant's constitutional claims were not timely asserted because they were.

FRCP 5.1 does not prohibit the assertion of constitutional claims when it is not complied with. F.R.C.P. 5.1(d).

FRCP 5.1 does not entitle Plaintiff to have such constitutional claims stricken when 5.1 is not complied with. *Id.*

Therefore, the Plaintiffs' objection to future "questioning [of] the Constitutionality of a Federal Statute" should be denied. Parties to a lawsuit are entitled to make all good faith arguments relevant to that lawsuit. The Rules of Civil Procedure do not permit the anticipatory denial of arguments Plaintiffs' seek. Given FRCP 5.1(d), Plaintiffs' Motion to Strike should be denied as contrary to the rule Plaintiffs' cite in their pleading.

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Proof of Service

A copy of the foregoing will be served May 3, 2011 by operation of the court's electronic filing system.

/s/Dean Boland
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